IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

AND
THE HON'BLE SRI JUSTICE M.NARAYANA REDDY

WRIT PETITION No.21533 of 2004

Between:

Mude China Veerraju, S/o. Ramalingam,
Flat No. 18, 3rd Floor, Jetty Deluxe, Prakash Nagar,
Rajahmundry, East Godavari District.

..... PETITIONER

AND

1.The Chief Manager, Authorized Officer, Andhra Bank,

Zonal Office, Eluru, West Godavari District.
2.M/s. Bommana Cloth Show Room,

rep. by its Proprietor, Mrs. Mude Simhachalam,
W/o. M. China Veerraju, Flat No.18, 3rd Floor,

Jetty Deluxe, Prakash Nagar,
Rajahmundry, East Godavari District.
3.Mude Udaya Bhaskar, S/o. China Veeraju,
Flat No.18, 3rd Floor, Jetty Deluxe, Prakash Nagar,
Rajahmundry, East Godavari District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the notice dt.09-07-2004 issued by the 1st respondent and other consequential proceedings including attachment and sale of property etc., as arbitrary, illegal, null and void, contrary to the provisions of Act 54 of 2002, without jurisdiction and unconstitutional and same is liable to be set aside.

Counsel for the Petitioner: Mr.G.KRISHNA MURTHY

Counsel for Respondent No.1: Mr.N.RAMA MOHAN RAO
Counsel for Respondent Nos.2 & 3: None appeared.

The Court at the admission stage made the following :

ORAL ORDER: (per the Hon'ble the Chief Justice)

The petitioner in this writ petition filed under Article 226 of the Constitution of India is questioning the legality and validity of the notice issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SERFAESI Act'), dated 9th July 2004.

Learned counsel for the petitioner submits that before issuance of notice, there is already a civil suit pending filed by the respondent Bank against the petitioner and others for recovery of dues, and it is not open for the respondent Bank, during the pendency of O.S.No.311 of 2002, to invoke the provisions of the SERFAESI Act. He has referred to the provisions of the SERFAESI Act as well as the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Ordinance, 2004.

Going through the aforementioned two legislations, we do not find any bar in the respondent Bank in simultaneously proceeding before the civil Court as well as under the provisions of the SERFAESI Act. Taking out proceedings for recovery of dues by the respondent Bank under the provisions of SERFAESI Act, as per the provisions of sub-section (4) of Section 5 of the said Act will not affect the pendency of the suit and it shall not abate, and it has to be continued in accordance with law.

Needless to add that the petitioner has adequate remedy of challenging any action to be taken by the respondent Bank by preferring an appeal under the provisions of the SERFAESI Act before the Debt Recovery Tribunal, and in that view of the matter, we see no ground to entertain the writ petition.

The writ petition is, therefore, dismissed.

(DEVINDER GUPTA, C.J.)

2nd December 2004.

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(M.NARAYANA REDDY, J.)

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To

1.The Chief Manager, Authorized Officer, Andhra Bank,

Zonal Office, Eluru, West Godavari District.
2. Two CD copies.